

The University of Maine

DigitalCommons@UMaine

Maine History Documents

Special Collections

6-1914

Private Boundaries in Maine

Harvey R. Pease

Follow this and additional works at: <https://digitalcommons.library.umaine.edu/mainehistory>



Part of the [History Commons](#)

This Thesis is brought to you for free and open access by DigitalCommons@UMaine. It has been accepted for inclusion in Maine History Documents by an authorized administrator of DigitalCommons@UMaine. For more information, please contact um.library.technical.services@maine.edu.

PRIVATE BOUNDARIES IN MAINE

A Thesis

Submitted in Partial Fulfillment of the
Requirements for the Degree of

Bachelor of Laws

By

Harvey R. Pease.

College of Law
University of Maine
Bangor

June 1914.

PRIVATE BOUNDARIES IN MAINE.

Table of Contents.

	Page.
I. Definition.....	1.
II. Creation.....	1.
III. Construction.....	3.
A. In General	
B. Plans.....	4.
C. Particular Words	5.
D. Uncertainty.....	6.
IV. Evidence.....	7.
A. Burden of Proof.....	7.
B. Admissibility	
V. Monuments.....	9.
VI. Corners.....	10.
VII. Courses and Distances.....	11.
VIII. Conflicting Elements in Description.....	13.
A. In General.....	
B. Courses and Distances	
C. Prior Description	14.
D. Marked Lines	15.
E. Natural Objects.	
F. Artificial Objects.....	16
G. Metes and Bounds.....	17
H. Maps and Calls for Adjoiners	
IX. Particular Boundaries.....	17
A. Buildings.....	18
B. Highways.....	19
C. Waters.....	22
(a) Non-navigable streams.....	23
(b) Ponds and Lakes.....	24
(c) Tidal and Navigable Waters and Sea-shore....	25

PRIVATE BOUNDARIES IN MAINE.

I. Definition.

It is the purpose of the writer to deal in this thesis with only private boundries and not with county, state or international boundries.

Perhaps the best definition of a boundry is this:-

"Any separation, natural or artificial, which marks the confines or line of two contiguous estates. The term is applied to include objects placed or existing at the angles of the bounding lines, as well as those which extend along the lines of separation."

Bouvier's Law Dictionary.

II. Creation.

Having defined what a boundary is, the next step will be to look at the methods of creating them and the several classes of boundries. In general boundries divide themselves into two classes, Natural and Artificial. But of whichever class it may chance to be, its creation is first in importance.

The creation of boundries by deed is, of course, the most common and will be taken up in a later part of this thesis. Parol and actual location, long acquiesced in, agreement by parol,

followed by acquiescence are all of importance.

Whether location of a boundry by parol is sufficient was the issue in the case of Grove v. Richardson, 4 Maine 327.

The case was an action to recover seisin and possession of certain land. It was settled that a dividing line that had long been fixed and acquiesced in by the parties ought to be upheld unless it was clearly erroneous. Weston, Justice, in very apt words, covered well the situation when he said, "A dividing line, between owners of adjoining tracts, may be settled by them under a misapprehension or mistake, which, if clearly shown, may be corrected, but unless this act of the parties be regarded as strong evidence of the accuracy of the line thus amicably established, a fruitful source of litigation will be left open, of which one or both the parties may avail themselves when under less friendly feelings."

Grove v. Richardson, 4 Maine 327.

This principle was upheld and further applied in Moody v. Nichols, 16 Maine 23.

Later the above principle was made binding in a case coming up on a writ of entry. A fence was built on what was agreed to be the line just after the deed was made. This fence was considered to be the line for several years. The court held this line as agreed upon would be upheld, although not conforming with the original calls in the deed.

Knowles v. Toothaker, 58 Maine 172.

III. Construction.

A. In General.

It is settled law in Maine that in the case of a deed or conveyance which is in some particulars false, the false part will be rejected, and the true part ~~part~~ retained if sufficient. In a certain case the land was described as "beginning at a stake and stones standing in the north corner of that part of the lot, which the judgment debtor bought of Harvey Wait," in truth no part of the lot had been bought of Wait. That part of the description was rejected and the truth was established and upheld.

Wing v. Burgis, 13 Maine 111.

The intention of the parties as appear from the instrument will be upheld by the court.

A lot was described as follows: "Twenty acres of land in lot 56 in the 120 acre lot west side of Royal's River in Nor Yarmouth, and bounded as follows; viz., Beginning on the westerly side of said river, by the river at the dividing line betwixt the land owned by Hannah Russell and the grantor in the aforesaid lot, thence running westerly on said dividing line so far that a line running southerly parallel with the westerly end line of said lot, until it comes within six rods of the southerly side line of said lot, thence easterly, keeping the width of six rods from said side line to Royal's river aforesaid, thence by said river to the bounds first mentioned, containing twenty

acres of land." The court held that although the deed recited the exact amount of land intended, yet the calls of the deed were clear and were such that they must be given effect to, and if the monuments were established they would hold good.

Dunn v. Hayes, 21 Maine 76.

In the construction of description it is the law that every call must be answered, if it can be done. "The intention of the parties is to be sought by looking at the whole, and none is to be rejected, if all the parts can stand consistently together."

The above quotation is from the opinion of Tenney, J. in Herrick v. Hopkins, 23 Maine 217.

B. Plans.

Where the description of the land is by reference to a plan and there is no other description its location and limits must depend altogether on the plan.

Thomas v. Patten, 13 Maine 329.

A deed contained the following clause, "said premises being lot numbered fifty-two on the plan of said town of Dennysville, etc." The court held that the plan referred to became a part of the deed as much as if incorporated therein.

Lincoln v. Wilder, 29 Maine 169.

C. Particular Words.

The Maine court has had occasion to rule on the construction of many particular words. The writer will endeavor to take up the more important decisions.

A deed read as follows: "Easterly eighty-four feet on land of L." L's land extended only about half that distance. Held, the boundary would be the extension of L's line in the same direction.

Ricker v. Barry, 34 Maine 116.

The words southwest line means due southwest, and not in a southwesterly direction.

Robinson v. Miller, 37 Maine 312.

"Beginning at a stake and stones, etc." This establishes the governing corner and all distances, directions and calls and courses, depend on this corner.

Wiswell v. Marston, 54 Maine 270.

The above case of Wiswell v. Marston also settles the law that the expression "running on line" means the true line of division.

The words "to a certain person's land" do not mean to land that happens to be occupied by that person, but to such land as he owns himself.

Jewett v. Hussey, 70 Maine 433.

Rather a peculiar case arose out of a conveyance that read in part "said boundary by the upland to be located and fixed by said R and L." It was decided that under such a deed R and L had the power of locating the boundry line subject to the remainder of the description in the deed.

Haynes v. Jackson, 66 Maine 93.

The Maine court defined "crossing the bar" as meaning passing clear across the entire width of the bar on the line of low water.

Bremen v. Bristol, 66 Maine 354.

In the case of a boundary on a well established line to extend to stake and stones, which stake and stones are not in said line, the line will be considered as a continuing monument and will govern.

White v. Jones, 67 Maine 20.

The words "south to X's land" and also northerly and easterly have been held to mean due south or north as the case may be.

Reed v. Knight, 87 Maine 137.

Foster v. Foss, 77 Maine 279.

D. Uncertainty.

It is clear that the intention of the parties when discovered governs. In case of any uncertainty in the description the rule must obviously be that those parts may be disregarded and the

intention gathered from the remainder of the description.

Such was the situation and holding in Madden v. Tucker, 46 Maine 367.

IV. Evidence.

A. Burden of Proof

The general rule as to the burden of proof is the same as in all cases being upon the plaintiff or claimant, but should the defendant interpose a defense in the nature of a claim of right the burden may shift to him.

Black v. Grant, 50 Maine 364.

The weight of authority is that the party who sets up a claim of a certain particular boundary or monument must introduce proof of same. Also, in case of agreements settling boundaries between adjoining lands, he must affirmatively prove the agreement on which the claim is based.

On the first of the above stated rules Maine has ruled and she agrees with the weight of authority.

Robinson v. White, 42 Maine 209.

There is, however, no ruling on the second point, but the writer believes Maine would hold with the weight of authority.

B. Admissibility.

I might state the general rule to be that the same kind of

evidence is admissible to establish boundaries as is admissible in the case of other disputed issues.

Tradition evidence of boundary, by the weight of authority, was and is admissible to establish ancient boundaries, both public and private,

This is not the law in our own jurisdiction. In the case of public boundaries it is clearly admissible, but not where private boundaries are in issue.

Chapman v. Twitchell, 37 Maine 59.

Should a private line be proved to coincide with a public line then it is obvious that tradition evidence would be admissible.

Deeds and grants, such as have a tendency to identify and define the boundary that is in issue, are properly admissible.

Chase v. White, 41 Maine 228.

Parol evidence of the agreement of the parties in locating boundaries after the deed is made, is properly admissible.

Wing v. Burges, 13 Maine 11.

V. Monuments.

Monuments are of two kinds, natural and artificial.

If in a description of boundaries of land, a natural monument is called for, the identification of this monument is to be made by a fair and reasonable construction and interpretation of the whole instrument. Regard must be had, however, for the true intent of the parties as expressed therein.

Nelson v. Butterfield, 21 Maine 220.

Artificial monuments are monuments or signs erected and placed by the hand of mankind, as before stated. The identification of an artificial monument is a question for the jury to be gathered from the instrument and testimony.

"What are boundaries of land conveyed by a deed, is a question of law. Where the boundaries are is a question of fact. An existing line of an adjoining tract may as well be a monument as any other object. And the identity of a monument found upon the ground with one referred to in the deed, is always a question for the jury."

Davis, J. in Abbott v. Abbott, 51 Maine 575.

Monuments not located actually at the time of making the conveyance, but located by agreement immediately thereafter will control.

Kennebec Purchase v. Tiffany, 1 Maine 219.

The destruction of boundary monuments has been the subject of legislation in our state. With regard to these our statute says: "Whoever wilfully and wantonly or maliciously injures or removes any monument erected, or tree marked as a boundary of any land or town; destroys, defaces or alters the marks thereon, made for the purpose of designating such boundary; etc (dealing with mile stones, guide-boards, etc.) shall be punished, etc."

Maine Revised Statutes, Chapter 128, Sec. 19.

VI. Corners.

Corners like monuments may be for the court or jury to determine. What is sufficient to constitute a true corner is for the court to determine, and its identity is for the jury.

A corner was located as being opposite a point on a highway. The court held that the corner was located as a point on the side of the road where a line drawn at right angles to the road from the point located, would meet the side of the road.

Bradley v. Wilson, 58 Maine 357.

In case the corner referred to is a known and ascertained point or is easily ascertainable upon the ground by a proper examination, the true location of such corner is the one referred to in the instrument.

A deed was to "the westerly corner of land set off to William Cobb." The corner was ascertainable . Court would not admit evidence that a stake was meant, which stood in a different place.

Pride v. Lunt, 19 Maine 115.

Government corners are conclusive when they can be found or the spot where they were originally established is definitely established. It makes not the least difference if the location was correct or otherwise.

Crogin v. Powell, 128 U. S. 691; 32 L.Ed. 566.

Government corners are of very little importance in regard to private boundaries with which this thesis deals. The writer will devote more time to other essential points called for by the subject.

VII. Courses and Distances.

The general rule of the all powerful intent of the parties applies more strongly in the case of courses and distances than in other branches of this subject. If the intent of the parties, however, cannot be ascertained, courses are run as they are called for by the deed.

Four classes of lines are involved in courses, continuous, straight, meandering, parallel lines.

The weight of authority is that a line the beginning of which is established will run and continue in the same direction, provided nothing contrary appears and is proved. The presumption also is that a line, the termini of which is given, is a straight line. The above would undoubtedly be upheld in Maine.

Suppose termini of the boundary be on a stream, and the line of boundary be the stream. The line would obviously follow the meander of the stream.

Brown v. Chadbourne, 31 Maine 9.

The intention of the parties governs parallel lines.

Disputes often arise in cases in which a corner or course is lost. In such cases it is competent to establish such lost or disputed corner or course by running back, having reversed the courses and distances, from a proven corner or bound, having proven the reversed course or distance.

Seidensparger v. Spear, 17 Maine 125; 35 Am. Dec. 234.

As a general rule distances, provided they are not controlled by other calls, are to be strictly applied. It is plain that the line between two points is to be considered as meaning the shortest line.

It may often be that the distance given is to a monument

in which case the monument, when proven, would control. However, if no terminating monument is named, it is clear that the line should be run by the exact courses and distances given.

Scammon et al v. Sawyer, 4 Maine 429.

No uniform rule has been established by the courts as regards measurements on stream and shore. Each case must be decided according to the intent of the parties, considering all influencing circumstances.

VIII. Conflicting Elements in Description.

A. In General.

As to just which of several elements of a description should be given more effect, there is no established rule. It is well established, however, that all vague and repugnant description must give place to any clearer description.

Ricker v. Barry, 34 Maine 116.

The intention of parties has been dealt with in an earlier part of this thesis.

B. Courses and Distances.

The rule of law is that courses and distances must give place to boundaries visible and provable on the face of the earth.

It is immaterial whether the bounds and monuments be natural or artificial if they are in existence. However, it is also well established that in case of a call of quantity, courses and distances will control.

Chandler v. Green, 69 Maine 350.

In selecting which calls shall be supreme it is necessary that the intention of the parties, if possible, be given effect to in all cases.

Beal v. Gordon, 55 Maine 482.

Tenney, C. J., in an early case, in speaking of the controlling forces of courses and distances said: "It is not, then, a case where monuments cannot be found, but where they cannot be reconciled one with another. And, if no mode could be found to ascertain the intention of the parties, as disclosed by monuments, it is a case analogous to one, where monuments fail. In such a state of things, courses and distances are to govern."

Hamlington v. Foster, 45 Maine 32.

C. Prior Description.

Maine has no case on this point, but the tendency of our court, as gathered from its other holdings on boundary law, would tend to lead one to believe that it would agree with the weight of authority.

In case two descriptions of the same property are used and are equally clear, the rule is that the prior description should be followed.

D. Marked Lines.

In case there are defined established lines that have been surveyed, they will be upheld as the real boundary and will not give place to other less certain matters of description. To quote Tenney, J., who said: "If, however, there be a precise and perfect description, showing that the parties actually located the land upon the earth, and another, which is general in its terms, and they cannot be reconciled with each other, the latter may yield to the former."

Herrich v. Hopkins, 23 Maine 217.

The court has further applied this doctrine. It has held that lines marked and surveyed would triumph over maps, field notes, etc.

Stetson v. Adams, 91 Maine 178.

Courses and distances also give place to marked lines.

Mosher v. Berry, 30 Maine 83.

E. Natural Objects.

Natural objects, on account of their permanent nature,

are of course of more value than calls in descriptions. Natural objects would control in case of conflict with artificial monuments, maps, plats, and field notes, provided the intention of the parties was not obviously contrary.

Courses and distances are also over-weighed by natural objects.

This was established by an important case in which there is a dissenting opinion. The course and distance was in part, "thence south eighty-four degrees east one hundred and fifty-six rods to the pond to a stake and stones." The stake and stones were gone, and the pond was found to be more than one hundred and fifty-six rods from the beginning point. Here there was clearly a case where natural objects and courses and distances were in conflict. Justices Appleton, Hathaway, May and Chief Justice Tenney held that the pond being a natural object would govern. Justice Goodenow, dissented; but his reasoning was placed on other grounds.

F. Artificial Objects.

Artificial objects have the same controlling power over maps, calls of adjoiners and courses and distances as natural objects. The above has only one qualification, the artificial monument must be plainly capable of identification.

Esmond v. Tarbox, 7 Maine 6; 20 Am. Dec. 346.

Whitcomb v. Dutton, 89 Maine 212.

Tyles v. Fickett, 73 Maine 410.

G. Metes and Bounds.

Metes and bounds from which actual boundaries may be ascertained invariably control courses, distances and quantity.

Chandler v. McCard, 38 Maine 564.

As stated previously, course and distances give place to other forms of description, and it may be said are of the least value.

H. Maps and Calls for Adjoiners.

Maps, plats and field notes are next in value. In general they control calls for adjoiners, metes and bounds, and courses and distances.

Haynes v. Young, 36 Maine 557.

Heaton v. Hodges, 14 Maine 66; 30 Am. Dec. 731.

Calls for adjoiners are controlling over courses and distances and metes and bounds, also over quantity.

Bryant v. M. C. R. R. Co., 79 Maine 312.

IX. Particular Boundaries.

There are certain well defined classes of boundaries. The most important of these are buildings, highways, and waters.

A. Buildings.

The use of a building as a designation of a division line is not a common one. But in case a building is used as such the question of whether the wall of the building or the line of its eaves, projections or cornices, would mark the line, is important. A distinction is made by the Maine court between the boundary line of a highway and that between adjoining land owners.

If the building marks the line of the highway the wall would be the line. The reason is obvious, The adjacent owner is entitled to the use of the air over a highway and to the use of the earth under it, as long as he does not interfere with the use of the highway by the public. It is reasonable therefore that the cornices would overhang the highway and the wall itself mark the boundary. Not so in regard to adjoining owners.

Walton, J, said: "When land is bounded by a building, it would be unreasonable to assume that the parties to the conveyance intended that the main portion of the building should be on one side of the line, and the cornices, and other projecting finish, on the other. Hence the rule that in such cases the line shall be regarded as wholly on one side of every portion of the building."

The above is a dictum from Farnsworth v. City of Rockland, 83 Maine 508. The case involved the boundary of a highway and held as stated in a preceding paragraph.

B. Highways.

The use of a highway as a boundary is perhaps, the most common of the particular boundaries.

In using the term highway the intention is, on the part of the writer, to include only open and used roads. Such is the use of the term in the decisions of courts of law.

The most common way is to bound by a certain road or highway. Plainly this would include the land to the centre of the highway.

Webber v. Overlock, 66 Maine 77.

The following early case in Maine forms the basis for our holdings in regard to this point.

The grant read, in part, this: "Beginning on the westerly side of the county road, etc., etc." Held that this carried title to the centre of the highway.

Johnson v. Anderson, 18 Maine 76.

A closer case arose when a stake and stones was located on the side of the highway. The calls in the deed were, "On the east by" a certain road and the last call to the southerly post in a pair of bars, on said road." Even the naming of a stake was not sufficient to limit the boundary to the side of the road.

Cottle v. Young, 59 Maine 105.

In a similar case the course was "running by said road to a stake." Barrow, J., said; "The mere mention in the description of a fixed point on the side of the road as the place of beginning or ending of one or more of the lot lines, does not seem to be of itself sufficient to prevent the passing of the title to the middle of the highway."

Low v. Tibbetts, 72 Maine 92.

Cottle v. Young, 59 Maine 105.

We have seen it is well settled that, unless expressly excluded, title passes to the centre of the road, provided grantor had title thus far.

Hunt v. Rich, 38 Maine, 195.

The actually traveled road bed often varies from the recorded location. It is therefore necessary to determine which would govern. Maine settled this point in the case of Brooks v. Morrill, *infra*.

The deed bounded the lot on the east "On the west line of said road." The issue in the case was whether the actual traveled road or the road as recorded should be considered as the boundary. The traveled road was held to be the boundary. In discussing the case, Whitehouse, J., said: "A road is a way actually used in passing from one place to another. A mere survey or location of a route for a road is not a road. A mere location for a road falls short of a road as much as a house

lot falls short of a house.

Brooks v. Morrill, 92 Maine 172.

The laying out of a new road to replace an old one has not the least effect on the boundary lines.

Chadwick v. McCausland, 47 Maine, 342.

The highway must be a public highway and used as such. A street charted and indicated on the face of the earth is not sufficient if it has not become a public street.

A lot was sold and bounded on a street, "as laid down on said plan." The street was not opened until after the grant. It was not a highway at the time of conveyancing. The public was not bound to accept the street. The boundary was the side of the prospective street. The grantee had only an easement in the prospective street until its opening, but did not own the land to its centre.

Bangor House v. Brown, 33 Maine 309.

This question of highways as boundaries can be summed up no better than by quoting Chief Justice Appleton: "It is undoubtedly true," he said, "that where land is sold bounded by, upon, or along a highway, the thread or centre line of the same is to be presumed to be the limit and boundary of such land. But it is equally true that the grantor, by apt and fitting words, may exclude the presumption and reserve the entire road to himself subject to the easement of the public. He may bound

his grantee by the line of the road and not by the road itself.

Cottle v. Young, supra.

Again, Chief Justice Appleton lays down the same principle by quoting Shaw, C. J. in Newhall v. Ireson, 8 Cushing 595.

"Land no doubt may be bounded by the side of the highway but it must be done in clear and distinct terms to control the ordinary presumption."

Before leaving the topic of highways I want to add that by statute in Maine our legislature has provided for the preservation of boundaries of highways. This only has to do with the extent of the easement so to speak and over what portion of the highway the easement exists.

Maine Revised Statutes of 1903,

Chap. 23, Sec. 11.

C. Waters.

Next to highways the most important particular boundary is waters.

In discussing waters I shall sub-divide the subject into, non-navigable waters, ponds and lakes, tidal waters and seashore. Non-navigable streams, being the most common, will receive first attention.

(a) Non-navigable Streams.

Under ordinary circumstances it is the almost universal rule that a grant of land bounded on a non-navigable stream goes to the thread of the stream.

This was first ruled upon in Maine in the case of Morrison v. Keen, 3 Maine 472; and the opinion cited as authority was King v. King, 7 Mass. 496.

When the meaning, however, is to exclude the flats as in the case in which the deed read, "thence east until it strikes the creek on which the mill stands, thence south-westerly on the west bank of said creek," Rice, J., in his opinion says, "to hold that a party may not bound a grant by the bank, margin, side, or shore of a stream of water, or by the side of a way, wall, ditch, or other similar object, would, involve an absurdity. In all cases where the language used clearly shows that to be the intention of the grantor, the bank, side, margin, or shore, become themselves monuments, and are to be treated as such."

Bradford v. Cressey, 45 Maine 9.

The public has an easement to pass to and fro on even non-navigable streams and the holding of the land under the water by the riparian owner is subject to such easement.

It is clear that a grant to, by, or on the stream carries title to filum medium aquae, while express words may limit

it to the bank.

The writer knows of no case in Maine which settles just what is the thread of the stream, but finds that the weight of authority is that the thread of the stream is midway between the banks when the water is at its natural level and neither at high nor low water mark. The main channels or currents are not important and have no bearing on the determination of what is the thread of the stream.

pratt v. Lamson, 2 Allen (Mass.) 275.

Kimball v. Schoff, 40 N. H. 191.

The weight of authority in regard to side lines on non-navigable streams is that they extend from the termini of the line on the bank at right angles with the thread of the stream.

Deerfield v. Arms, 17 Pick. (Mass.) 41.

(b) Ponds and Lakes.

If the pond or lake be not what is termed a great pond, that is, being in extent more than ten acres, then the littoral owners own to the middle of the lake or pond. This is the same as in the case of a non-navigable stream.

In the case of great ponds the littoral owner takes to low water mark. However this may be changed and they may be limited to high water mark by express words.

Wood v. Kelley, 30 Maine 47.

Bradley v. Rice, 13 Maine 198.

Artificial ponds and lakes have the same standing as natural ponds and lakes.

(c) Tidal and Navigable Waters and Sea-shore.

In considering this division of my subject it is first necessary to define tidal and navigable waters, and to distinguish between them if any distinction exists.

Bouvier's Law Dictionary defines tidal waters thus: "All arms of the sea, bays, creeks, coves, or rivers, in which the tide ebbs and flows, are properly denominated tide-waters."

It would seem that our court from its previous decisions would hold that tidal and navigable waters are analogous, and that on waters that are navigable in fact but not tidal, the boundary line of the adjoining owner would go to the thread of the stream.

Granger v. Avery, 64 Maine 292.

Brown v. Chadbourne, 31 Maine 9.

S. C. 50 Am. Dec. 641.

Storer v. Freeman, (6 Mass. 435)

Spring v. Russell, 7 Maine 273.

But to return to tidal waters. Our law on this point originated in the Colonial Ordinance of 1641 of Massachusetts. To use the words of Chief Justice Parsons, Storer v. Freeman, 6 Mass. 435, this ordinance provided, "that the proprietor of land adjoining on the sea or salt water, shall hold to low water mark,

where the tide does not ebb more than one hundred rods, but not more where the tide ebbs to a greater distance."

This ordinance had the effect of changing the English law, and it is law in Massachusetts and Maine today. Since, at the time of its adoption, Maine was part of Massachusetts.

Barrows v. McDermott, 73 Maine 441.

Therefore, unless words are used such as by the bank, shore or highwater mark, the boundary of land bordering on tidal waters and the sea is at low water mark unless the tide ebbs more than one hundred rods.

Lapish v. Bank, 8 Maine 85.

Stone v. Augusta, 46 Maine 127.

The term shore needs some discussion, as used in legal phraseology, it meant the flats between high and low water marks. Thus it is obvious that a grant to the shore and by the shore would extend only to high water mark.

Dunton v. Parker, 97 Maine 461.

A late Maine case was settled in 1905 that involved this whole law of boundaries on navigable tidal waters and sea-shore. This case elaborately discussed the different terms of exclusion.

I quote Justice Savage thus: "But it must be remembered that the effect of the Colonial Ordinance upon the construction of deeds is merely to fix boundaries. A deed of the upland prima

facie conveys flats,- not appurtenances nor privileges merely, but the land itself, subject to public uses,- to low water mark. On the other hand, we think it must be held that if, by descriptive terms in the deed, the flats are excluded, they do not pass even as appurtenances or privileges. They are outside the boundaries fixed by the deed."

Thus we find that unless limited by words of exclusion the boundary line is the low water mark and the flats or shore pass if owned by the grantor.

Side line on flats are lines at right angles with the line joining the termini of the lines at the edge of the shore, and in case the portions of two owners overlap the same is divided between them.

Colonial Ordinance 1640.

Ware v. Ware, 9 Maine 42.

In conclusion I wish to lay great stress on the controlling, all-powerful effect of intention on the determining and establishing of boundaries.

It might be said that intention is the key to the law of boundaries. Therefore intention is first to be considered before giving effect to other elements in their established places by law. Instruments creating boundaries are to be construed so as to reflect the intention of the parties.

It has been the purpose of the writer to consider the principle, governing phases of the law of boundaries. To this end there are embodied in this thesis the leading cases in Maine on the several points. It was not proposed to embody all cases decided in our reports involving boundary law, but only cases illustrating the governing points, and from which the conclusion of minor points must be obvious, have been used.

A few cases out-side our State have been cited and in like cases the writer believes that our court would follow the decisions of the states thus cited.
